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No. 574

IN THE

Supreme Court of the United States

DAVID MASLOWSKY, GEORGE CHRISTOPHER, SAM J. KAPLAN, F. W. SCHELLENBERGER, IRVING L. GOTTLIEB and BARBARA SLOVE,

Appellants,

vs.

JOHN E. CASSIDY, JR., Chairman, PAUL F. ELWARD, ALBERT W. HACHMEISTER, CECIL A, PARTEE, THOMAS F. RAILSBACK and GEORGE M. BURDITT, Members of the Illinois House of Representatives Commission, created under House Bill 2269, 74th Illinois General Assembly,

Appellees.

On Appeal From The Supreme Court Of The State of Illinois.

Appellants' Reply

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Appellant's Reply

Appellees have not addressed themselves to any of the constitutional issues raised in appellants' Jurisdictional Statement. We search the Commission's brief in vain for any discussion of the Equal Protection Clause, or of the constitutional and statutory prohibitions against surreptitious electronic eavesdropping. They cite no case in which a legislative commission, state or federal, proposed to make public use of evidence obtained in violation of the United States Constitution.

The utter failure of the Commission to address themselves to the important issues involved here makes lengthy reply unnecessary. Following is a brief response to the few points set forth in the Commission's brief.

(1)

Reply to Appellees' Motion, Part I, pages 7 to 12.

Appellants have never disputed the right of a state legislature to conduct investigations, including inquiries concerning its own members. However, appellants do contend that when the means employed to carry out this objective transgress rights guaranteed by the laws and Constitution of the United States, it is the function of the judiciary to protect those rights.

It makes no difference whether the transgression is attempted by the legislature as a whole or by one of its committees. The judicial power is the same in either case. Thus, in *Kilbourn* v. *Thompson,* 103 U.S. 168 (1881) (cited at p. 9 of Appellees' Motion), and in *Greenfield* v. *Russel,* 292 Ill. 392 (1920) (cited at p. 12 of Appellees' Motion), this Court and the Supreme Court of Illinois respectively held legislative investigating commissions subject to the limitations of the Constitution, awarding damages for an improper investigation which had taken place (*Kilbourn*) and enjoining an improper investigation which was about to take place (*Greenfield*).

In *Re Chapman,* 166 U.S. 661 (1897) (Appellees' Motion, pp. 9-10), this Court observed that the proposed legislative inquiry did not violate the plaintiffs' ". . . security against unreasonable searches and seizures protected by the 4th Amendment." (166 U.S. at 668) *A fortiori,* had the methods employed by the commission violated rights guaranteed by the Fourth Amendment (as does the pro-

posed investigation of the Illinois House Commission in the case at bar) this Court would have intervened (as did the Circuit Court here).

(2)

Reply to Appellees' Motion, Part II, pages 13 *to* 14.

Although the Commission concedes (p. 14) that this Court has the "undoubted power to apply an anticipatory restraint on the Commission," it nevertheless reverts to the inconsistent argument that the trial court's injunction violates principles of separation of powers—a contention flatly rejected by the Illinois Supreme Court. (34 Ill. 2d at 470, 216 N.E.2d at 677.) This determination as to a matter of state law is binding upon this Court. *Dreyer* v. *Illinois,* 187 U.S. 71, 84 (1902); see also *Jordan* v. *Hutcheson,* 323 F.2d 597, 601-602 (4th Cir. 1963).

The cases cited by the Commission (p. 13) are inapposite because they involve neither state issues of separation of powers nor an attempt by a legislative commission to use evidence obtained in violation of the United States Constitution and a federal statute.

(3)

Reply to Appellees' Motion, Part III, pages 14 *to* 18.

The Commission makes much of the fact that House Bill 2269 discriminates against but a small group of persons. This is the very point appellants seek to make. As the discrimination becomes more invidious, fewer persons are affected. The ratio is inverse between the number discriminated against and the seriousness of the breach. Appellees' argument reflects a misunderstanding of the central purpose of the Equal Protection Clause of the Fourteenth Amendment.

Furthermore, in most cases involving violations of the constitutional protections of privacy (*e.g.*, search and seizure cases), the only person whose rights are violated is the petitioner before this Court. That fact does not render the constitutional issues insubstantial.

Appellees argue that appellants' constitutional questions are raised in a "vacuum" because appellants face no immediate state criminal prosecution. (Appellees' Motion, pp. 15-18). As discussed in appellants' Jurisdictional Statement (pp. 33-34) the protections afforded by the Equal Protection Clause of the Fourteenth Amendment and Section 605 of the Federal Communications Act are in no way contingent upon the presence or absence of criminal liability. Appellees have totally ignored this important and substantial point.

Moreover, whether or not potential criminal liability is a prerequisite to an invocation by appellants of the protections afforded by the First, Fourth, Fifth, Ninth and Fourteenth Amendments is one of the several substantial questions raised by this appeal. (See Jurisdictional Statement, pp. 33-34).

In any event, there is a substantial question of whether appellants have received a complete immunity from possible criminal liability as a result of the decision of the Illinois Supreme Court. This Court has steadfastly adhered to the doctrine, first enunciated in *Counselman* v. *Hitchcock,* 142 U.S. 547 (1892), that any grant of immunity must be coextensive with rights guaranteed under the Constitution. The decision of the Illinois Supreme Court did not grant immunity to appellants. Rather, all that is prohibited is the use of certain evidence against appellants in the courts of Illinois.

Conclusion.

Appellants respectfully pray that this Court grant plenary consideration of this appeal.

Respectfully submitted,

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